applies only to suits pending at the time the federal action is brought. U. S. COMP. STAT., 1901, § 720; *Dietzsch* v. *Huidekoper*, 103 U. S. 494. If jurisdiction first attaches in the federal court it will enjoin subsequent proceedings in a state court which would defeat the jurisdiction. *Ex parte Young*, 209 U. S. 123, 28 Sup. Ct. 441; *Starr* v. *Chicago, R. I. & P. Ry. Co.*, 110 Fed. 3; aff'd in *Prout* v. *Starr*, 188 U. S. 537, 23 Sup. Ct. 398. It seems clear, however, that issues not directly decided by the federal court can subsequently be passed upon by the state court. *Buck* v. *Colbath*, 3 Wall. (U. S.) 334; *Harkrader* v. *Wadley*, 172 U. S. 148, 19 Sup. Ct. 119. Whether or not the second suit is an infringement on the federal jurisdiction seems to depend on whether the federal judgment could be pleaded as *res judicata*. See *Harkrader* v. *Wadley*, *supra*, 168. This plea will only bar suits on questions necessarily decided in the first case. *Sargent* v. *New Haven Steamboat Co.*, 65 Conn. 116, 31 Atl. 543. If the suit is begun in the state court before the federal suit is terminated, the state suit can be temporarily enjoined if it appears that it may interfere with the ultimate decree of the federal court on the above principle. *Wagner* v. *Drake*, 31 Fed. 849; *French* v. *Hay*, 22 Wall. (U. S.) 250. As the reasonableness of the rates was hardly one of the issues to be decided in the principal case, the court correctly refused to enjoin the suit to reduce them.

INSURANCE — RIGHTS OF BENEFICIARY — CHANGE OF BENEFICIARIES: WHEN CHANGE IS CONSIDERED COMPLETE. — The insured took out a life insurance policy with the defendant, naming his wife as beneficiary. By its terms he had the right to change the beneficiary by filing with the defendants written notice, the change to take effect upon the indorsement of the same on the policy by the company. The insured sent notice that the plaintiff was to be made the beneficiary but died before it reached the defendants. *Held*, that the plaintiff may recover. *Mutual Life Ins. Co.* v. *Lowther*, 126 Pac. 882 (Colo.).

Equity's jurisdiction to afford relief from accident being limited, it will not aid mere intention without substantial performance. *Holland* v. *Taylor*, 111 Ind. 121, 12 N. E. 116; *Ireland* v. *Ireland*, 42 Hun (N. Y.) 212. But in many cases it has been held that where there is no express condition precedent and the insured has substantially complied with the requirements for changing the beneficiary, but is prevented from completing them by death, equity will treat the change as completed. *Berkeley* v. *Harper*, 3 App. Cas. (D. C.) 308; *Luhrs* v. *Luhrs*, 123 N. Y. 367, 25 N. E. 388. These are principally cases where the real controversy is between two beneficiaries. *Titsworth* v. *Titsworth*, 40 Kan. 571; *National American Association* v. *Kirgin*, 28 Mo. App. 80. In analogous cases of defective execution of powers, equity exercises a similar jurisdiction, relieving against the accident of death. *Sayer* v. *Sayer*, 7 Hare 377. Equity, indeed, will not ordinarily perfect an incomplete gift. But in analogous cases of mistake where property is in dispute between two donees, equity will interfere to give it to the one intended by the donor. *Huss* v. *Morris*, 63 Pa. St. 367. In the principal case, however, the provision as to the time of taking effect seems a clear condition precedent. *Sheppard* v. *Crowley*, 61 Fla. 735, 55 So. 841; *Sangunitto* v. *Goldey*, 88 N. Y. App. Div. 78, 84 N. Y. Supp. 989. *Contra*, *Heydorf* v. *Conrack*, 7 Kan. App. 202, 52 Pac. 700. Acts by the insured can hardly amount to substantial performance when the defendant has made an absolute condition for the very purpose of protecting itself against a possibile double liability. *Sheppard* v. *Crowley*, *supra*. Especially is this true where the insurance company, as here, is actually setting up the defense for its own benefit.

JURY — WAIVER OF TRIAL BY JURY: CONSENT TO TRIAL BY FIVE JURORS. — In a trial for assault before a Court of Special Sessions the defendant, after demanding a jury, consented to a panel of five. The lower court, without ref-

erence to the jury's similar verdict, found him guilty. *Held*, that the defendant has waived his right to a jury trial and that the finding of the court is sufficient. *People* v. *Bent*, 151 N. Y. App. Div. 734, 136 N. Y. Supp. 276.

The old law attached almost superstitious sanctity to twelve as the jury number. TRIALS PER PAIS (anno 1725), 79. The New York constitution perpetuates this jury only in "cases in which it has been heretofore used." N. Y. CONST., Art. 1, § 2. But the jury in the principal case is wholly different, since the New York Court of Special Sessions antedates the constitution and since the right to a jury of six in that court is merely an optional privilege subsequently introduced. *People ex rel. Murray* v. *Justices*, 74 N. Y. 406. In many cases the waiver of one juror is condemned lest it lead to the waiver of all. *Cancemi* v. *People*, 18 N. Y. 128. But in the Court of Special Sessions complete waiver is permitted. *People ex rel. Murray* v. *Justices, supra.* Since the defendant may waive the entire jury, and since the inviolable jury of twelve is not in question, the objection to a waiver of the number seems unduly technical. *State* v. *Wells*, 69 Kan. 792, 77 Pac. 547. Furthermore, the principal case inaccurately finds a consent to waive a jury from acquiescence in a kind of jury which turns out, under the court's holding, to be non-existent at law. But consent is a question of fact, and the defendant's demand for a jury seems absolutely to negative any intent to waive a jury trial.

LARCENY — POSSESSION AND LARCENY — POSSESSION OF ABANDONED CHATTELS. — In an indictment for receiving stolen property, the property was laid in a canal company from whose land the chattels were taken. No evidence was offered that the property had not been abandoned by third parties, or that the canal company had assumed dominion over the chattels. *Held*, that there is not sufficient evidence as to the property in the iron to support a conviction. *Rex* v. *White*, 7 Cr. App. R. 266 (Eng., Ct. Cr. App.).

Possession of a chattel continues in the possessor until he abandons it or it is taken from him. *Merry* v. *Green*, 7 M. & W. 623; *Regina* v. *Townley*, 12 Cox C. C. 59. The owner of realty on which a chattel is abandoned has a right to possession as against a wrongdoer. *South Staffordshire Water Co.* v. *Sharman*, [1896] 2 Q. B. 44; *Barker* v. *Bates*, 13 Pick. (Mass.) 255. But he has no possession by the abandonment *per se*. *Queen* v. *Clinton*, Ir. R. 4 C. L. 6. *Cf. Bridges* v. *Hawkesworth*, 21 L. J. Q. B. 75. However, he will be regarded as securing possession by displaying an intention to assume dominion over that class of chattels. *Regina* v. *Rowe*, 8 Cox C. C. 139. *Cf. Queen* v. *Finlayson*, 3 N. S. Wales S. C. R. 301. In *Regina* v. *Rowe* possession of iron was secured by emptying the canal with intent to take out all such chattels. Some such mental element is necessary. *Queen* v. *Finlayson, supra.* But see *Regina* v. *Riley*, 6 Cox C. C. 88, 92. A landowner does not intend to assume dominion over any chattel that may be abandoned on his land, such as a diseased body or a mad dog. Possession involves liabilities as well as rights. Nor is an intention to receive chattels that are beneficial and reject those that are harmful sufficiently definite. The landowner must foresee the possibility of that kind of chattel coming to his land, and prepare to care for it if necessary. Therefore the principal case rightly required more evidence of possession.

MASTER AND SERVANT — ASSUMPTION OF RISK — EFFECT OF CRIMINAL STATUTE REQUIRING SAFE APPLIANCES. — A statute imposed a criminal liability upon a factory owner who failed to guard specified machinery. The plaintiff, an employee, sued for an injury caused by the neglect of the defendant to guard a set-screw, as required by the statute. The master set up the defense that the servant assumed the risk of the negligence. *Held*, that the defense will not be allowed. *Fitzwater* v. *Warren*, 206 N. Y. 355. See NOTES, p. 262.